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## SLAVERY IN GERMANIC SOCIETY DURING THE MIDDLE AGES.

“Eis qui calamitatem pati potuere et fortuna adversa  
luctantes denique superavere.”

[PREFATORY NOTE.—In Ingram's *History of Slavery* many may have missed an adequate treatment of this social status during the Middle Ages. English historians generally seem to consider slavery in the mediæval period as an imperfect type, more akin to serfdom. They therefore conclude their investigations with the downfall of the Roman Empire. After that, in their opinion, slavery seems to have lost character. Nevertheless the Germans brought slaves with them when they first appeared upon the scene. Slavery existed with them, as it always exists where war is the predominant occupation and booty the chief income, and it accordingly was of no uncertain type. Moreover, the entrance of the Germans into relations with the socially and economically highly-developed Roman world, where slavery was looked upon as one of the chief pillars of economic existence, the upheaval and wholesale reduction of classes succeeding the conquest, and finally the burden of maintaining an extensive new empire at whatever cost, could not lead to abolition of slavery. Sometimes, indeed, these things helped the slave to become master; but, on the whole, they prolonged the existence of slavery as an institution. That slavery comparatively early passed into serfdom cannot change the fact that for centuries it existed as a recognized and feared state of extreme servitude, of which the harsh features were often German and Roman combined. For it is not true that as a race the Germans were averse to servitude. On the contrary, the free and omnipotent warrior needs the slave as his social contrast; and it was the North, untouched by Roman influences, that showed the slave most absolutely subjected; not the South, where he more easily became a serf. The readier change was no doubt due to the greater number of slaves in the South, and number, as Sohm says, is power. The only difference between slavery with the Romans and the Germans is that among the Romans we can far more properly speak of slavery as a state that comprised numberless individuals who do not further occupy us; whereas among the Germans it is more to the point to speak of the slave as an individual whose state can be judged of from his particular case. But this difference is really due to the imperfect economic opportunities of the Germans, rather than to original intention. For when conditions changed, as they later did, and serfdom came to take the place of slavery, which in theory happened very early, the serf of Germany and France, and I venture

to say of England as well, was hardly better off than the Roman colonus. His state was practically economic slavery, and it was perhaps even harder than it seems, since it did not lack the semblance of personal liberty.

To attempt to verify some of the statements just made, and to give a more exact conception of the meaning and bearing of slavery among the Germanic races, is the object of this monograph. Owing to circumstances, however, it cannot be more than a generalization. I have wished, nevertheless, to make use of the sources, as far as they have been at my disposal, and also of the extensive studies of social conditions in the Middle Ages which characterize the later German historical school, and which are not generally known to American readers. The vast material has been reduced to as simple and manageable a compass as the subject would permit, and I have limited the references as much as possible in order not to overburden the text. References to law could not always be quoted in full, especially in the case of laws so little known as the Scandinavian and Icelandic. Authors, such as Wilda, Amira, and Grimm, who give translations of these laws, would usually be of greater service, and they again give further references. I hope later to treat more extensively certain questions here only touched.]

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WE draw our information concerning slavery mainly from two sources: From history and from the laws of the nations with which we are dealing. History gives a few leading hints of the origin and development of slavery, but that it never proceeds to discuss or explain the nature of slavery is because it is naturally less concerned with definitions than with events. For more exhaustive knowledge we turn to the laws. These, if not always explicit, attempt to lay down rules for conduct from which it is possible to draw definite conclusions concerning almost every relation of life. Slavery, besides being a feature of society, is above all a juridical relation, and belongs almost exclusively under the head of civil law. If, however, the slave figures conspicuously in the paragraphs of the criminal code, this is due to his peculiar double relation as thing and as man.

I shall begin with a review of the principles leading to the development of slavery and constituting its main features. The study of institutions, as institutions, may in other cases afford much satisfaction, but in regard to slavery it offers only meager results, because the situation of the slave is, and must be, in the main, the same everywhere. This is plain from the start, self-evident. The variations according to nations and customs are but insignificant, and the general outcome one type. Only when slavery approaches its termination, when inner and outer influences combine to break the awful monotony and create true change, does it call for specialization in treatment. The psychological problem of whether and how a human being can live in such narrow, unindividual bounds interests us less than when and how he got beyond them into freer, more natural conditions of life. After all, we know that a slave-relation is impossible; sooner or later the human being or a succession of generations must press out of it. Therefore, in treating of the slave proper, the scientific method usually employed is better replaced by the philosophical; since the points of interest to the student of civilization are far more the reasons and main features of slavery than the national or tribal differences, which indeed have little bearing on the whole.

Slavery, as a feature of human life, may in general be studied from two main points of view: that of reduction, the original and crude form; and that of restitution, the later and improved state, which must end in liberty. Reduction (or utility may serve as well) presents itself at once as the governing idea in slavery. The slave

exists for *use*; in the earliest time perhaps to be devoured as game; later to be sacrificed to gods and heroes

Saga Olafs Trygvasonar (Heimskringla), ch. 74. "En ef ek skalt til blota hverfa með yðr," etc. "But look ye, if I turn me to offering with you, then will I make the greatest blood-offering that is, and will offer up men, yea, and neither will I choose hereto thralls and evil-doers; but rather will I choose gifts for the gods the noblest of men." (Translation by William Morris.)

and finally to work. He is nothing more than the beast of burden whose fate he generally shares, except that he possesses faculties which make him more valuable property, though more dangerous, than the dumb brute or the dead tool. And here, in his double character as object and as person, lies the problem which the social ideas governing his reduction or his restitution have to solve. His double existence as thing and as man presupposes different relations (as thing, a relation to an owner; as man, a relation to a fellow human being), and must lead to different solutions. The emphasis given to the one or to the other side of his existence creates an egoistic or an altruistic attitude. If self-interest governs the relation, an obstinate maintenance of slavery is the result. If the humane attitude dominates, the slave must gradually be put on an equal footing with his master. The final solution of the problem is indeed foreshadowed in the want of harmony inherent in slavery between ethics and business, so that however often slavery reappears as an outcome of political or economic needs, it after all bears the stamp of transition and in the end must reach freedom. This, I trust, will all become clearer as the essay proceeds.

I. *Reduction. Utility. The downward course, the slave becoming more and more a thing.*

A. FLUCTUATING STATE.

From the standpoint of utility and self-interest, the conditions by which slavery is brought about may be either artificial, *i. e.*, not having existed previously, but created by some forcible act to serve a certain purpose; or, natural, *i. e.*, rowing out of precedents already established, of which slavery as an institution is a last consequence. In the case of the artificial conditions man had been free, an equal of his fellows; but by a sudden turn of fortune, and for reasons further to be explained, he is reduced to servitude. A new class of people is

thus started, yet not established unalterably and forever. In the case of the natural conditions, however, the fluctuating relation becomes by long usage permanent; it is continued, and its continuation introduces into society, not a new class merely, but in the course of time literally a new race. In this race the inferior qualities predominate, being no longer hypothetical, but real, fixed, and typical; and the subordinate relation is not *de jure* but *de facto*. Let us remember the passages in the magnificent old Norse poem, *Rígsþula*, relating to the origin of classes: "Lowest stands the black-haired, deformed slave (black-haired because of foreign origin) with heavy awkward step and boorish manners—a slow worker; then the well-to-do peasant, who prides himself on his appearance; then the noble, grown up in the pleasurable exercise of his body, with the yellow hair, the fair skin," etc. The Christian democratic view may scorn distinctions like this and consider them devoid of meaning; the Pagan aristocratic view could and would not disavow them, and it is with this side of Germanic life that we have to do.

Man may be enslaved through conquest, purchase, or crime. 1. History furnishes the first evidence of the establishment of transitory slavery by means of war and brute force. War is probably the oldest and most natural mode of recruiting a slave class before there exists a permanent, self-perpetuating slave class.<sup>1</sup> This mode is less an article of actual law than a paragraph of international and universal custom, which by simple logic of force decrees that whoever succumbs in might succumbs also in right, the loss of power is the loss of self. Whoever cedes his arms cedes all—life, liberty, even identity.<sup>2</sup> History affords plenty of instances of the making of slaves as a chief booty of war. Even after Christianity had begun its ameliorating work, we find in *Gregory of Tours* a passage like this: Theoderic says to his people: "Follow me, and I will lead you into a land where you will find gold and silver as much as you desire. There you can have herds and slaves and clothes in abundance."<sup>3</sup> In the wars between the sons of Chlodevich each brother made slaves of the prisoners taken from the other. Slave trade was common over the

<sup>1</sup> GRIMM, *R. A.*, p. 320.

<sup>2</sup> *Ibid.* "Na rechter Wahrheit." etc.; p. 322, "Aus den besiegeten," etc.; p. 323, . . . "es fragt sich," etc.

<sup>3</sup> *G. of T.*, iii. 11.

whole continent till after the tenth century,<sup>1</sup> and the greater number of these slaves must have been acquired by war, if not by positive conquest.<sup>2</sup> Thousands of instances in all history illustrate this custom. It is to such an extent a matter of custom that no further word concerning it appears necessary.

2. History also informs us of the establishment of a slave class by the second means of enslavement, namely, purchase (barter, trade). For this the stage of being already a prisoner and thus bereft of liberty may be considered a necessary prerequisite. Trade with slaves was a most ordinary feature of border life.<sup>3</sup> The German father had power to sell his child and his whole household into captivity.<sup>4</sup>

Edict. Pistense (864) c. 34. "In lege etiam quam praedecessores nostri et nominatissimi imperatores constituerunt de his, qui filios suos fame aut alia aliqua necessitate cogente vendunt, plura habentur capitula, quae omnia hic non necesse duximus ponere."—M. G. Legum, sectio ii, 2 (cp. Cod. Theod., iii, 3, 1; and Cod. Just., iv, 43, 1, 2).

A case of barter pure and simple is the story of how a king's son is exchanged for a ram, and then for a coat, and finally is bought for nine mark gold.<sup>5</sup> The church throughout its course did all it could to stop the trade by buying the prisoners and setting them free (*Vide the Life of St. Severin*, c. 4. 8, 10, 19, and passages in *Gregory of Tours*, vol. vi. p. 8), but it was not effectually restrained.<sup>6</sup>

3. On turning to consider enslavement as a result of crime, we leave history and enter on law proper. Law reveals another phase of slavery of equally fluctuating character: the establishment of a slave

<sup>1</sup>In the Scandinavian countries and in England slavery was abolished in the twelfth century. But the laws of the thirteenth century (Later Gpl., Norway) and of the fourteenth century (Sweden and Denmark) still speak of the "slave."

<sup>2</sup>GRIMM, *R. A.*, p. 323. "Gegen slaven und heiden," etc. But p. 342, "Liest man die Traditionen," etc.

<sup>3</sup>*Laxdæla Saga* (*Iceland*), xii. 6–22. GRIMM, *R. A.*, p. 321. POLLOCK and MAITLAND, *Hist. of Engl. Law*, vol. i. p. 11. "Slavery, personal slavery," etc.

<sup>4</sup>JORDANES, *Getica*, c. 26, 135. (Mon. Germ. Auctores, Fol. ed. v, p. 1.) GRIMM, *R. A.*, p. 329, "So gaben die Friesen," etc.

<sup>5</sup>*Olaf Trygvassons Saga*, c. 5, 6. . . . en hafði sveinana með ser ok seldi þeim manni er Klerkr hét ok tok fyrir hafr einn vel goðan. Hinn þriði maðr keypti Olaf ok gaf fyrir vesl gott eða slagning," etc. GRIMM, *R. A.*, p. 321.

<sup>6</sup>POLLOCK and MAITLAND, vol. i. p. 12. "Selling Christian men beyond the sea . . . forbidden by Aethelred" (vol. v. p. 2; vol. vi. 9); repeated in Cnut's *Laws*. (vol. ii. p. 3). Cp. *Lex. Rib.*, 16. *Lex. Sal.*, 39, sec. 2. "Si quis hominem," etc. . . . under penalty of 200 sol.

class by means of punishment (crime, debt). Here we leave the field of chance, as is war, and enter regulated, orderly social life. There is no longer indiscriminate warfare with the accompanying defeat and spoil, but peaceful intercourse. The fundamental principle of such peace and order is the sense of obligation. Obligation, however, cannot be created without the infliction of punishment for neglect or violation. Germanic laws abound in rules about crime and debt. In the eyes of the German warrior the duties of the state are of the simplest kind. Government exists to protect life, secure property, and maintain the border; this is all that can be demanded. Accordingly the state is found only in its crudest form, not the complicated perfected machine that the Romans knew. In all the Germanic laws the breach of peace can be atoned for by certain fines; the harsher measures, such as mutilation, exile, death, being reserved (for fear of starting the old feud and anarchy) only for the grossest offenses. Violation of property and breach of obligation to pay (fine) are more generally punished by loss of liberty for a shorter or longer time.

The free individual can thus be reduced to slavery for murder (secret), illegal relations, theft, or debt.<sup>1</sup>

Murder (with concealment of corpse), as well as theft, seem to the German particularly hateful because of their stealthy underhand nature, unworthy of a freeman.<sup>2</sup> The freeman who violates the dignity of a free woman, and either free man or woman who forget their position so far as to associate with slaves (marriage) become slaves, *i. e.*, their behavior excludes them from the free.<sup>3</sup> The outlawed free man

<sup>1</sup> Concerning the possibility of a freeman being reduced to slavery for murder (with concealment of corpse) see GpL., c. 156, . . . "fellr til útlegðar (exiled)," and chap. 178, "þat er niðingsvíg . . . þá fara han utlegr oc úheilagr." (Exile might under some circumstances lead to slavery. See sec. 3). POLLOCK and MAITLAND, vol. i. p. 33. "Slavery was recognized penalty," etc. GRIMM, *R. A.*, p. 328. "Konnte einer," etc. AMIRA, *Nordgerm. Obligat. Recht.*, vol. i. p. 126, p. 131, note 3, and p. 480. "Der schuld knecht habe sich durch diebstahl 'verwirkt.'" *Ine's Laws*, c. 7, p. 1. *Eadweard's Laws*, c. 6. *Lex. Burgund*, tit. xlvii. sec. 1, 2.

<sup>2</sup> WILDA, *Strafrecht der Germanen*, p. 153. "Treubruch oder heimlichkeit," etc., p. 706-714. As a matter of course, the murderer is an outlaw. If he cannot produce the payment to the family of the murdered, he may be kept by them as a slave. SCHROEDER, *Rechtsgesch.*, pp. 72, 73.

<sup>3</sup> *Lex Sal.*, c. 25, p. 5, 6. WILDA, p. 826. GRIMM, *R. A.*, p. 326. "Unfreie hand zieht die freie nach sich," etc. THÉVENIN, *Institutions, Charte*, 151. *Fable in Gregory of Tours*, vol. iii. p. 31.



may desire to exchange exile for slavery.<sup>1</sup> In regard to slavery for

GpL. c. 260. "Nu verðr maðr of þýfsku útlagr." . . . . " . . . . outlawed for theft, the one from whom the goods is stolen shall pay himself from the thief's property and three times the value of what was stolen." Also c. 256, 257, 258, 259.

theft, or for debt,<sup>2</sup> the law looks on the thief who cannot restore the stolen property much as on the insolvent debtor; and on the debtor who cannot pay as on the thief of another's property. Slavery for debt seems to have been the more common of the two. A debt is any unpaid obligation, not only fines for crime and compositions, but also private dues, such as rent of land, personal debt. Debt is in itself delict; the debtor has of course been properly warned, the process has started and been concluded without satisfactory result, before execution can begin. For debt in the sense of fine not properly paid a freeman can be exiled; and slavery begins when the creditor cannot obtain any satisfaction for his claim in the debtor's property and no third person comes to the rescue.<sup>3</sup> Slavery is thus established for a child whose father gives it as security for a debt.<sup>4</sup> Slavery of this kind is either permanent or temporary, *i. e.*, the debtor works off his debt in the continuous service of his creditor till the amount is paid, but not longer.

Cp. *Eadweard's Laws*, c. 6. " . . . the debtor (as slave) shall owe as much work to the creditor as is needed to pay the debt" and not more. *Leges Langobard.* Luitprand, c. 152. " . . . ut serviat tantos annos, ut ipsa culpa, etc. AREGIS, c. 6. " . . . usque ad prae finitum tempus." THÉVENIN, *Charte* 38. " . . . in ea ratione ut interim quod ipsos solidos vestros reddere protuero et servitium vestrum et opera . . . . facere et adimplere debeam."<sup>5</sup>

Of the two forms, permanent and temporary, the first is the older.

*Grágás*, c. 117, ii. " . . . svá sem þræll væri faðir hans en ambátt möper hans."

<sup>1</sup> WILDA, p. 515. "Mag es wohl vorgekommen sein. . . . Es erstand durch letzteres aber keine wahre eigenschaft." See note 1. Cp. SCHROEDER, p. 46, note 1. Prohibition of a free Frank accepting slavery (instead of death?) as punishment for theft, see *Capitul.*, No. 77 Boretius a. 801-13. c. 15.

<sup>2</sup> Passage in *Tacitus*, c. 24. " . . . victus voluntariam servitutem adit."

<sup>3</sup> AMIRA, vol. i. p. 128. " . . . mit dem man auch dessen frau und kinder vernechtet " (Gotland).

<sup>4</sup> MAURER, *Die Schuld knechtschaft*, p. 4.

<sup>5</sup> See also *Capit. Leg. Rib. addit.* a. 803, c. 3 LL. ii (ed. Bor.); *Capit. Caroli ap. Anseg. serv.* a. 810, 811, c. 3.

This seems evident from the improvement in the contract and the resignation by the creditor of a part of his rights which characterize the milder form, and which an earlier age could not have permitted. Here it is the church which in its attempt to live up to the ideal of brotherly love, to the Mosaic prohibition of usury of man (Levit. 25 : 39), succeeded in changing the previous atrocious custom.<sup>1</sup> The same desire to break the rigor of law caused the church to prefer seeing the prisoner of war, the unredeemed hostage, the exiled culprit, enslaved rather than killed. The debtor on becoming a slave is actually reduced to a slave's state; his hair is cut (?); a strap or collar is passed around his neck; he places his head under his master's arm, etc.<sup>2</sup>

THEVENIN, *Charte 110*. "Corrigeam ad collum meum misi." *Charte 38*. "... sic mihi aptificavit ut brachium in collum posui." *Charte 161*. "Quattuor itaque denarios ex more sibi supra caput posuit." Likewise *Charte 171*.

So much for what must be looked upon as characteristic of permanent slavery only. Still it would be very false indeed to think of the milder form as merely make-believe.<sup>3</sup> That, too, is after all a mortgage of the person of the debtor to the creditor which possesses all the rigor of the old Roman *nexum*. For the debtor may be reduced to slavery permanently if he cannot pay or if he leaves the creditor without the latter's permission. Not only this, but if the debtor is unable to pay and nobody offers to assist him, or if he proves obstinate and refuses to work, the creditor may sell him for the amount of the debt. He may also cut off from the debtor's body what corresponds to the amount due, *i. e.*, the creditor may mutilate his recalcitrant slave, presumably as an act of vengeance for the lost security, or he may even kill him as if he were a thief caught in the act.<sup>4</sup> The latter alternative reminds one strongly of tit. 50, 4 and 58 of the Salic code where the debtor has in the end to pay with his life.

*Lex Sal.* 50, 4 "... de vita culpabilis esse debet." 58. "... et si eum in compositione nullus ad fidem tulerunt h. e. ut redimant de quod non persolvit, tunc de sua vita componat."

<sup>1</sup> *Aelfred's Laws*, Introduction, c. 11.

<sup>2</sup> GRIMM, *R. A.*, 328. "Zum zeichen der knechtschaft," pp. 702, 714. GUERARD, *Polyptique d'Irminon*, vol. i. p. 287. WILDA, p. 523. "Das sclavische abscheeren der haare," etc.

<sup>3</sup> AMIRA, vol. ii. p. 162.

<sup>4</sup> GpL., 71. FpL., x. 26. MAURER, *Schuld knechtschaft*, pp. 19, 20. AMIRA, vol. ii. 157-158.

That these stages of slavery are in general preliminary, artificial, and fluctuating in character, not based on anything permanent, is easily seen from the fact that the state of servitude can be changed and annulled as rapidly as it was brought about. When the captive by a sudden turn of the fortune of war is rescued, he is as much a freeman as before. The slave through trade or the enslaved foreigner,<sup>1</sup> may be liberated by a sum equal to his value in the opinion of his owner, and his rights as a freeman are not lessened in the smallest degree. Moreover, the one who is enslaved for offense or for debt may atone by a sufficiently large fine,<sup>2</sup> or by restoration of the stolen property,<sup>3</sup> or the value of it three times (three times three).<sup>4</sup> He may likewise be redeemed by a third person.<sup>5</sup> Norse law in some cases even allows the enslaved debtor, as quondam freeman, to keep something of what he earns or of what otherwise may belong to him, such as the fines due him if anybody without cause molests him or his, thus enabling him to pay off his creditor. But this too must be looked upon as a later improvement of what was originally a strictly unfavorable condition.<sup>6</sup> If these things are done, if the amount forfeited is paid or security given for the payment of it, the temporary loss of freedom is of no account. The man or woman thus liberated recovers his or her natural rights. In the sole case of free men and women who associate with slaves and thus become enslaved themselves the law provides no relief unless it be that they buy their freedom as other slaves must do.<sup>7</sup>

The peculiar state of affairs on the continent or in England, where the natural rights of freedom are ceded, and more or less direct slavery

<sup>1</sup> SCHROEDER, p. 1.

<sup>2</sup> *Eadweard and Guthrum's Laws*, c. 7. 1. MAURER, *Schuld.* pp. 29. 30. This fine it has not always been possible to pay. Wilda may be right when he says that from criminals of this order the class of unfree was recruited, p. 515, 896.

<sup>3</sup> *Aethelberht's Laws*, c. 6.

<sup>4</sup> WILDA, p. 898, note 5.

<sup>5</sup> FPL., x. 39. AMIRA, vol. i. p. 127. "Die unfreiheit des schuldknechtes ist keine unbedingte . . . nur kann der schuldknecht sich nicht selbst auslösen. Abverdienen kann er sein schuld nicht . . ." In this respect the Swedish law is evidently more severe than the Norse or the English or any other law we know of.—AMIRA, vol. ii. p. 161.

<sup>6</sup> GPL., 71 AMIRA, vol. ii. p. 159.

<sup>7</sup> As an exception may serve GPL., 198, according to which the free woman who is enslaved because of unlawful relation to a slave can under circumstances free herself by paying a fine. It seems that here the aristocratic spirit is either too high for contamination or too low. It is no doubt safest to suppose the former.

accepted for the sake of certain benefits, such as protection, sure living, possession of land which could not otherwise be retained, this has no correspondent in Northern (Scandinavian and Icelandic) laws. It is the result of the fusion of conditions which came about in the conquest of Roman territory by Germans, and of the system of commendation with its succeeding subjection under the *munt* of a lord that had been in practice even before the conquest. This *munt*, in its severity among the Germans at least, was certainly not mere patronage, but an absolute power over the life and property of the subject, who was accordingly in the position of a slave, even though he did not bear that name.<sup>1</sup> There are of course numerous instances—as reminiscences of Roman law—of enslavement through coming into possession of land, the free man stepping into the living of a slave and in this way losing his liberty.

THÉVENIN, *Charte*, 157. Notum sit quod B. A. devenit servus . . . pro eo quod ei concessimus emere quandam domum in burgo nostro, quam emit a quodam servo nostra nomina . . . Ipse et uxor ei . . . et filius . . . venerunt in parlatorium nostrum et ibi positis, ex more, iiii denariis super capitibus suis.

This whole relation of quasi-servitude, however, seems to be connected with the beginning stages of serfdom rather than with slavery proper, inasmuch as the element of personal freedom at first ceded unconditionally is not permanently lost, but is retained in the later development of the relation, even though the economic subjection is the same. Of this I may speak in a later essay.

#### B. PERMANENT STATE.

The second main point in our inquiry concerns the character of slavery when become permanent and the outgrowth of natural conditions. Society has now formed itself within certain limits of recognized law and order; peace is restored; property once acquired remains in the hands of the owners; the slave, too, remains in the position created for him without any prospect of change. Indeed, his situation is continued indefinitely by the very fact that he has children born in this humiliating state, and who are the justification for its continuance. In other words, a "race" of slaves is created by means of propagation. That this idea of propagation is really a fundamental principle, decisive and invincible in slavery, is seen from the tacit understanding

<sup>1</sup> HEUSLER, *Institutionen*, vol. i. p. 121, 130. POLLOCK and MAITLAND, vol. i. p. 12. "Freemen sometimes enslaved themselves in times of distress," etc.

that pervades history and laws alike, even if nothing is definitely stated. This principle may properly be formulated thus: "Slave is child born of slave," even if the father be free—a sentence as clear and comprehensive as if it were from the code of Justinian.

GpL. 57. (Concerning the identity of the slave-born): . . . he shall be the father of a child (of a slave) whom the mother declares to be. Now she accuses a slave of being the father. . . . Now she accuses a free man, . . . then that child is his slave-born child (whom he can manumit by taking it to church before it is three years old and there liberating it; otherwise it remains his slave.<sup>1</sup>

"Slave is child born of slave." This had been agreed upon long before the laws were written; it was a social axiom that nobody needed to discuss. The appearance of the slave, his miserable clothing, his low stature, his often mutilated or deformed body, his branded and scarred skin, his short, bristly hair, and the insignia he bore, indicated not only his position, but equally often his type; and nobody questioned that whatever came of a slave must have characteristics that made association and assimilation with the free impossible.

What was, then, on the whole, the condition of the slave? It seems impossible to answer this question properly except by some reference to Roman law and custom.

The view has often and vigorously been put forth that the condition of the slave among Germanic races was essentially different from that among the Romans.<sup>2</sup> It is said that the idea of individuality opened a new epoch in the history of civilization, and brought some benefit also to the slave. According to this opinion, the idea of individuality is manifested among the Germans in favorable contrast to the idea of the collegiality and the mechanical character of the state among the Romans. With the Germans even the slave had an individuality, and it was respected as such.

But is not this viewing the situation with eyes blinded with prejudice in favor of the German—seeing him as he came to be, not as he

<sup>1</sup> Cp. SCHROEDER, p. 46.

<sup>2</sup> There is no doubt that slavery became ameliorated among the Germanic races from "esclavage" to "servitude," as Guérard expresses himself (*Polyptique*, vol. i. p. 277). This is due chiefly to Christianity, which impressed its commands more easily on the crude but more receptive German mind than on the skeptical Roman. One who wishes, however, to know what slavery was really like among the original Germans, must take off, as best he can, the layers which Christianity deposited, and gather the evidences of the warrior spirit and the strong Pagan class feeling.

was?<sup>1</sup> The present study has given me some opportunity to compare Roman and Germanic institutions, and has furnished a curious commentary on the value of this belief in the more humane conception of the slave among the German races. In legal consideration for the slave, the views of the two races seem to coincide to a rather remarkable degree. One might think, indeed, that the similarity would be found especially in the Salic or the Burgundian laws, but it exists also in laws of the purest Germanic origin, such as the Scandinavian or the old English laws.<sup>2</sup>

If we peruse the Roman code with its strictly logical development of the idea of slavery and compare each important statement with corresponding instances in Germanic laws of almost all kinds, we find little, if any, difference, in meaning. The main idea is very much the same, even if the Roman is a system perfected to the utmost nicety in reasoning out the final conclusion, while the Germanic is only a rough draft, as it were, less exact in wording—a preliminary effort towards specifying in definite terms a relation that had long been a matter of practical life. If there is any difference it is temperamental, manifested in carrying out the letter of the law, rather than juridical, in establishing the line of conduct. But upon all this the evidence of the sources, is, after all, so meager that it is more a suggestion than a certainty which we are able to offer.<sup>3</sup>

The condition of the slave under Germanic law may be condensed into sentences such as these :

1. The slave is an article of property.
2. The slave has no personal rights.
3. His existence is vested in that of his master.
4. Aside from his relation to his master, the slave has no place in society.

That is, the laws do not say these things in so many words ; they do not put down the relation in such plain terms as the Roman laws do ;

<sup>1</sup> Jastrow, the most penetrating of the German investigators in this field, seems to think differently from most other scholars. In fact, he emphasizes slavery (esclavage, not servitude) as existing even during the Carolingian period.—*Zur strafrechtlichen Stellung*, etc., p. 26, note 2, as contrasted with WAITZ, *Verfassungsgesch.* vol. ii. p 230. "Römische Gewohnheiten," etc.

<sup>2</sup> WAITZ, *ibid.*

<sup>3</sup> POLLOCK and MAITLAND, vol. i. p. 2. "They [the laws] are intelligible only when they are taken as part of a whole," etc.

“servitus est dominio alterius subijcitur,” *i. e.*, the slave is a being who, instead of belonging to himself, is subjected by right of ownership to another man; but the words the Germanic laws use, and the meanings these convey, express exactly the same thing.

1. The slave in the severest form of servitude — and it is with this that we are at present dealing — is but a thing that can be owned; and his relation is indicated in terms which leave no doubt as to absolute ownership.<sup>1</sup> When the laws place the slave on the level of cattle and other mobilia, they are just as comprehensible as the Latin expression *res*, and the conclusion to be drawn is equally simple and exhaustive.<sup>2</sup> In Norse law we have the expression *fé* concerning slave in the sense of chattel (Lat *pecunia*, as distinguished from *mancipium*);<sup>3</sup> also that a slave is a man's man (*mans-maðr*) in the double sense of being his slave and belonging to his household.<sup>4</sup> Words such as *skalks*, *þeow*, *þræll*, *sveinn* (Gþl. 69, Um ábyrgð sveins mans) and others express servitude of the lowest character with an emphasis on the meanness, the contemptible nature, of the individual which has maintained itself even to the present day.<sup>5</sup> Since he belongs to the movables, a slave can as well be given away as sold or inherited or used as payments of debt (*fines*).

AMIRA, i, 465. Unfreie leute die zur mitgift einer frau gehört haben und vom manne verkauft oder bei ihm ausgelöst, etc., p. 723. Unfreie sind sachen. Daher können tötung, verstümmelung, verwundung eines unfreien nur als sachen-beschädigung, etc. GRIMM, *R. A.*, p. 342-343. Die knechte sind sachen dem herrn eigenthümlich . . . er darf sie wie thiere behandeln; . . . den knecht kann der herr gleich anderer waare verkaufen, es versteht sich von selbst, dass der knecht wie verkauft auch verpfändet, verschenkt, vertauscht, etc.<sup>6</sup>

<sup>1</sup> AMIRA, vol. i. p. 736. “Es gehören aber zu den kostbarkeiten gold, silber, unfreie leute,” etc.

<sup>2</sup> *Lex Sal.* 47. “Si quis servum aut caballum aut bovem,” etc. Likewise 10, 1. *Lex Rib.* 72, 1, Cham. 25.

<sup>3</sup> Gþl. v, 18. “En þat scal vera halfgillt fé er fe spillir horns, oc hofs, oc þræls.” FRITZNER, *Ordbog*. MÖBIUS, *Glossar*. Cp. the expression of American slaveholders: “A menial is not a man,”

<sup>4</sup> Gþl. 20. “Nu ef etr man mans kjot a freadögum,” etc. 22. “En ef spillir man manna barne sinu heiðnu eða christnu,” etc. FRITZNER, *Ordbog*. MÖBIUS, *Glossar*.

<sup>5</sup> GRIMM, *R. A.*, p. 301-304. Cp. the present use of villain.

<sup>6</sup> Donations of slaves to the church. TARDIF, *Monuments historiques*, I<sup>re</sup> part, *Cartons d. Rois*, No. 90 (790 A. D.), No. 93 (794 A. D.), 182, 227, 321, 562.

The slaves of a household may be divided as other property.

*Laws of Eadgar*, i, 2, 1. “. . . the rest to be divided in two, half to the hundred, half to the lord, except the servants, those the lord shall have, all of them.”<sup>1</sup>

And the slave himself can be divided, *i.e.*, he works some time for one master, some time for another.<sup>2</sup> He can also be let or hired as well as used as security for debt (other than fines).<sup>3</sup> Roman jurisprudence advances the view that the fugitive slave commits a theft, and allows the master to pursue him.<sup>4</sup> Germanic law, too, admits this right,

*Aethelstan's Laws*, vi, 6, 3. “But if the slave stole (himself) away . . . .” *vide* MAURER, *Kr. Ueberschau*, vol. i. p. 410. Cp. GpL. 71 where the enslaved debtor “steals” away and causes loss to creditor. *Leges Langob. Roth*, c. 281. “. . . the one who gives a fugitive slave food and keeps him more than a day shall pay his value to the master.”

and whoever brings back the fugitive may expect a reward.<sup>5</sup> The man that kills the slave of another shall make good the loss by paying the price of the slave. In Swedish law this is half the value of a cow or of a horse or 3 marks in money.<sup>6</sup> But there are instances of a slave being valued higher.

AMIRA, i, 464. “. . . 8 mark für den im hause geboren unfreien, 3 ½ mark sollen (nach jünger redaktion von Westmannalagen) für den gemeinen unfreien gegeben werden, 7 mark aber wenn einer, der des bauern schlüssel führt, im hof erschlagen wird.” Further, p. 483, 656.

And it is most common to prize him according to his usefulness.

*Vide Lex Sal*, x, iv, 2, cp. GpL, 182. “Nu drepr maðr þræl annars mannz, þa skal hann bæta aptr sem men meta næctan hann. . . . Then he (the guilty party) shall pay according to what men value him (the slave) naked.” Here it is the slave rather than his occupation which determines the price.

<sup>1</sup> GRIMM, *R. A.*, 343. “Theilung der kinder zwischen mehrere herrn.” AMIRA, i, 296.

<sup>2</sup> JASTROW, p. 13, note 5. GEFFCKEN, *Lex Sal.* 35, 1 and p. 150.

<sup>3</sup> GpL. 223. “Giallda svena þá alla er heima ero alnar.” 274, 69. “Now a man hires another man's slave,” etc. GRIMM, *R. A.*, 343. “Eine ancilla ist der preis für pferd, schild, und lanze.” COULANGES, *Institutions (L'Invasion germanique)*, p. 82. “Proprietarius servo cuius usufructus ad alium pertinet.”

<sup>4</sup> COULANGES, 84. “Servum fugitivum sui furtum facere.” *Digest*, 47, 2, 60. *Cod. Just.*, vi, 1, 1.

<sup>5</sup> GpL. 68. Cp. GpL. 40. GRIMM, *R. A.*, 345, 5. “Der knecht darf sich *nicht* won dem grund und boden entfernen . . . . Ire debet quoque sibi jubatur.”

<sup>6</sup> AMIRA, vol. i. p. 395. “Drei mark silber . . . werthbetrag des unfreien.”



Hence the value varies exceedingly.<sup>1</sup>

The fine for injuring a slave is represented by the value of the slave, not by any fraction of a wergeld, as would be the case with a freeman. In Norse law the lord is to have his loss refunded if the slave is rendered useless by carelessness or mutilation, or if he is murdered.

GpL. 69. Now someone borrows the slave of another, then he shall be responsible that the slave be not sent across a dangerous river or ice, or where bears lie, or on dangerous mountains, or on the sea in storm, or into any other dangerous place. And if the slave should perish thus, . . . the man who borrowed him shall pay for him to the owner. . . . Now the slave lies sick or wounded, then he shall be allowed to lie thus a week, later he shall be brought to the owner, etc.

*Ibid.* 215. "All, thegn or thrall, shall have compensation equally for wounds. And if anybody wounds another man's slave, he shall maintain that slave while ill and pay the lord for the work the slave ought to be doing and the physician besides."<sup>2</sup>

When buying a slave the master must be protected by the presence of witnesses from getting one with hidden faults.

GpL. 57. ". . . kaupa saman lagakaupi oc lyritar" (lawful purchase in the presence of three witnesses).

FpL. v. 41. "Ef maðr kaupar man at manne," etc. (Epilepsy, cramps, and rheumatism, owing to poor food and hard work and exposure, seem to have been common ailments among the slaves, which the purchaser had to look out for). WILDA, p. 202. ". . . für die missethaten des sclaven wolle er (Gunnar) keine busse geben, weil ihm der gegner beim verkauf desselben seine fehler verborgen habe (Njálssaga).<sup>3</sup>

<sup>1</sup>With the Franks the ordinary slave is worth from 12 to 15 sol. A laborer or artisan, 25 to 40; blacksmith, 50 sol; expeditionalis, 55; silversmith, 100; goldsmith, 150; *vide* GUÉRARD, vol. i. p. 295. WILDA, p. 351.

<sup>2</sup>WILDA, p. 351. "Verstümmelt mann eines mannes sclaven . . . so erstatte man ihn wieder mit seinem vollen werthe oder gebe einen anderen dafür. (Swedish law *OG. Vap. m. c. 16, sec. 2.*)" AMIRA, i, 461. "Eines fremden unfreien oder ein fremdes thier das man absichtlich oder von ungefähr verstümmelt hat, ersetzt man durch lieferung eines unverstümmelten, wogegen man selbst das verstümmelte erhält," etc. *Ibid.*, p. 656. "7 mark váþabot zahlt der entleiher eines unfreien, wenn er ihn zum holzfällen benützt und der unfreie dabei seinen tod gefunden hat." (UPL. Mb. 6, sec. 4, translated fully on p. 483, g.)

<sup>3</sup>AMIRA, i. 284. ". . . der kauf gewisser sachen, wenn er nicht auf offener strasse geschieht dedarf des 'vitni' zu seiner form. Diese sachen sind unfreie knechte, vieh mit horn oder huf." *Ibid.*, p. 569. "Nach dem kauf eines unfreien hingegen darf der käufer innerhalb einer sechstägigen probefrist ohne entgelt das geschäft rückgängig machen."

The sale must be a bona fide sale, otherwise it is void.<sup>1</sup> From one to three days, six days, two weeks, one month, two months, or a whole year (AMIRA, i. p. 570), seems to be the time for trial allowed the purchaser.<sup>2</sup>

2. The slave has no personal rights, *i. e.*
  - (a) he is no equal.
  - (b) he cannot defend himself.
  - (c) the difference between him and the freeman is enormous,
  - (d) for whatever he may be inclined or be supposed to assume he can be peremptorily punished.

These restrictions are, of course, most plainly shown in the relation of the slave to the free.<sup>3</sup> Class-feeling or race-difference is very marked in all laws;<sup>4</sup> it strikes the freeman as well as the slave. The freeman or woman who joins a slave is enslaved, and his or her belongings go to the lord of the slave.<sup>5</sup> If a slave accuses a free man of the theft he has himself committed, he is to die.

GpL. 262. "Nu kenner maðr þræle manns herlennskum," etc. Now some one accuses a slave born in this country of having committed theft . . . if the slave is tortured . . . (and) declares a freeman to be the thief, the slave shall be kept as security . . . but if the freeman can free himself, the slave shall be killed.

If a freeman is murdered or wounded by a slave, even though unintentionally, the slave is not excused. To the Germanic mind the deed done is sufficient to condemn the doer. In this particular, in fact, the

<sup>1</sup> *Marculf.* vol. ii. p. 22. Form. *Sirmond.* 9. *Lex Bajuwar.* tit. xv. sec. 9. (Cp. GpL. 44.) Form. *Bignon.* 3 (and 5).

<sup>2</sup> FpL. v. 41 speaks of "niu ár" (nine years), which is to be understood as a lapsus for "ný hit næsta," which means the next moon, *i. e.*, within a month, *vide* AMIRA, vol. ii. p. 700, note 2.

<sup>3</sup> "Ueberhaupt giebt es nur zwei stände: den volkfreien (folkfræls) welcher rechtsgenosse ist und den unfreien welcher landrechts und wergelds darbt." AMIRA, *Swedisches Obligationenrecht* 19.) This statement, although not corresponding to the conditions of the rest of Germanic society (where the colonus and the litus appear as intermediate layers), holds good everywhere in regard to the slave. GRIMM, *R. A.* p. 349. F. 1-3.

<sup>4</sup> *Lex Rib.* tit. vii and viii give one instance among a thousand.

<sup>5</sup> *Lex Sal.* tit. 13, 8 and 9. 25, 5 and 6. Capit. ii. 1. Capit. ix. 3. (Ludovici Pii).

slave is not worse off than is the freeman.<sup>1</sup> If a slave beats a freeman, he is to die,<sup>2</sup> unless the lord can buy him free.

GpL. 204. "Ef þræll lystr mann frjálsan," etc. "If a slave strikes a freeman, his lord shall compensate the one who is struck, or he shall make the slave an outlaw."

But if a freeman beats a slave, it is of no consequence, except in so far as it should make the slave unable to perform his customary labor.

*Lex Sal.* 35, 3. i. "Si quis servum alienum batterit et ei super noctes 40 opera sua tricaverit, sol. 1 et  $\frac{1}{2}$  culpab." Also *Lex Rib.* xix, 1.

If a slave kills a freeman, he is given over to the vengeance of the relatives.<sup>3</sup> The abusive language of a slave cannot injure anybody's honor. If his abuse becomes offensive, the slave must be looked on only as the mouthpiece of the lord.<sup>4</sup>

The slave is no member of the community, and cannot be outlawed, otherwise he would be only too glad to break the peace, "weil die landflüchtigkeit ihm die freiheit gegeben haben würde," Wilda. 654.<sup>5</sup> In order to bring a slave who has committed a crime to confess, torture is permissible.<sup>6</sup>

GpL. 262. FpP. x. 40. ". . . en hann pína hann til sannar sögur." ". . . torture him till he tells the truth."

That the slave is a desperate part of society becomes only too clear from sentences such as these. All low deeds are ascribed to the slave, because a permanent evil intent must needs be his true nature. The

<sup>1</sup> AMIRA, vol. i. p. 707, note 8. The question how ordinarily it is possible for a slave to inflict a wound is to some extent solved by GpL. 56, which ordains that the slave may manage no purchase except that of his knife; this necessary tool was his; if it became useless, he could buy himself a new one.

<sup>2</sup> AMIRA, vol. i. p. 716. (Cp. p. 394.)

<sup>3</sup> *Lex Sal.* 35, 5.

<sup>4</sup> AMIRA, vol. i. p. 717, B. Cp. *Elit. Theodor.* 48, where freedmen and slaves may not give evidence against their lords or patrons in court. But *Leg. Visigoth.* vi. 4, 7.

<sup>5</sup> AMIRA, vol. i. p. 392. Cp. with above GpL. 204, which belongs decidedly to a later period, when the slave is being made individually responsible for his acts, and suffers punishment as does the freeman. See next main division.

<sup>6</sup> JASTROW, p. 16, note 20. Whipping to an extreme degree seems to have been the most common torture, but the sources show that there were other kinds as well. GUÉRARD, vol. i, p. 313, note 11. "C'était à l'accusateur a fournir le chevalet, les verges, de la grosseur du petit doigt, ainsi que les autres instruments de torture en usage" (*Lex Sal.* tit. 40, 1 and 6). GRIMM, *R. A.* cap. iii. B.

old English name for slave, *þéow*, has close affinity to the word expressing theft, *þéof*,

GpL. 154. "Nu ganga menn fiórer," etc. "Now four men walk on the road and one commits manslaughter and kills his comrade, then he is guilty who says he is. But if a slave is with them, then he is the killer of that man, if they say so." *Ibid.*, 255. "En ef þeirra er hvargi til þá er bryti þiófr at," etc. "But if none of these (freeborn members of the household by whom the stolen object might be concealed) is at home, then the foreman of the slaves is the thief."<sup>1</sup>

When we observe how the slave is punished in a way far worse than death, we see it is inevitable that he should become absolutely brutalized and the lowest of all human beings, the scoundrel par excellence.<sup>2</sup> During this period of uncompromising severity the slave's personality is ignored, is looked on as non-existent, bound up with that of his master; and thus, inasmuch as the slave has no personal rights, he has likewise no obligations; he cannot be considered responsible for his doings. As a matter of course, his master is responsible for him, *i. e.*, the slave exists only by and in his master.

*Lex Angl.* 16. "Omne damnum quod servus fecerit dominus emendet."<sup>3</sup>

Roman and German alike look on the slave as irresponsible;<sup>4</sup> the slave is a being entirely too powerless to do anything independently.

"A slave shall not be called the bane of any man." Wg. i. Md. 4, in WILDA, p. 656. AMIRA, i, 394.

The slave is only an instrument in the hands of the free.

GpL. 261. "Nu stela þeir stuld," etc. "Now a freeman and a slave steal together, then he is the thief who is free, but the slave shall not be counted, for he steals alone who steals with another man's slave."<sup>5</sup>

<sup>1</sup> WILDA, p. 860. ". . . gegen besonders gehässige und gefährliche beeinträchtigungen, die vorzugsweise von geringer geachteten personen, unfreien, besitz- und heimatlosen geübt zu werden pflegten, schutz zu verschaffen." GRIMM, *R. A.*, p. 303. "Indessen hat schalk den heutigen sinn eines losen, bösen, schlaunen menschen."

<sup>2</sup> See the frequent mention of whipping. The slave must often have been beaten to death, since it is impossible that he should stand 240 to 300 blows. WILDA, 510-514.

<sup>3</sup> JASTROW, pp. 10, 14.

<sup>4</sup> COULANGES, p. 85. JASTROW, p. 12.

<sup>5</sup> WILDA, pp. 613, 632, 633. AMIRA, vol. i. p. 392. ". . . der unfreie überhaupt nicht selbständig handelt, sondern werkzeug des freien ist."

The slave is an animal; inasmuch as he has no rights, he has likewise no guilt, the only one who holds a responsible position is the freeman, the master and lord. The law always refers to him as the only one who can give satisfaction.

*Lex Sal.* tit. 12, 2. 'Domino vero servi qui furtum fecit capitale et delaturam requirenti restituat.' *Lex Sal.* (ed. Walter) xi, 1. "Quicquid servus. . . . iubente domino perpetraverit, dominus emendet." And 2. Not even in case the slave runs away can the lord be looked upon as free from obligation.<sup>1</sup>

Roman law puts this equally definitely; according to it, the slave is virtually nobody; if he commits a crime it is his master who is made responsible; a crime committed against a slave justified the master in making a complaint and demanding indemnity.

*Digests* iv, 5, 3, ". . . quia servile caput nullum jus habet." ix, 4, 2. ". . . dominus suo nomine tenetur, non servi."<sup>2</sup>

As the master takes all responsibility for the actions of the slave, so he possesses all right to punish him.<sup>3</sup> This right to punish he yields to the offended party, if the latter can only thus be satisfied.<sup>4</sup> As for the kinds of punishment, see WILDA, p. 509-515. The master is omnipotent, no power can interfere. (*Roman Law*, COULANGES, p. 87. "Ces règles du vieux droit romain . . . avaient pour conséquence naturelle" etc.). Whatever a master does to his slave cannot be counted against him.

FþL. v. 20. 'If a man kills his slave (drepr þræl sinn til dauos) then he shall make it known during that same day, and not be responsible to anybody except God.' GþL. 182. "Now a man is accused of having killed his slave, . . . the act shall be made known, otherwise it is murder (in this case it is punished). *Aelfred's Laws*, Introduction, 17. "If a man strikes his own slave (male or female), who does not die that same day, but lives two or more days, then that man is not quite so guilty because it was his own property."

<sup>1</sup> He must at least pay for the damage the slave has done. If the lord in order to escape responsibility sells the slave, the sale is void. *Leg. Visigoth.*, iv. 18.

<sup>2</sup> COULANGES, p. 87. MOMMSEN, *Römisches Strafrecht*, p. 79. "Es hat eine epoche gegeben," etc.

<sup>3</sup> I am aware of no particular statement to this effect, but the jurisdiction of the lord is the outcome of this proprietorship.

<sup>4</sup> In this right of the offended party to punish lies the germ of a social relation for the slave, his acquiring a personality.

The position of the master as the one between society and the slave is so marked that it is only natural if at this point the fate of the slave and the action of the law cease to have any connection with each other.<sup>1</sup>

Thus the foregoing sentences lead necessarily to the conclusion that

4. Outside of his relation to his master the slave has no place in society. And if he is punishable for crimes that the master cannot or will not come up for, the outcome must be death.

GpL. 163. "Nu er sveini manns víg kent," etc. 'Now some one's slave is known to have committed manslaughter (manslaughter being the confessed killing of a man, murder the secret killing), then the lord shall protect him with such oath as he protects himself with. If the oath falls, the lord himself becomes an outlaw; and if he will not give oath for the slave, he will have to give him up. WILDA, p. 501, note 2. *OG. Dc.* 13.'

"If a lord will not pay for the slave who has killed a freeman, then a branch of oak shall be taken and bound around the neck of the slave and he be hung above the man's door."

This relation is, of course, one of absolute submission on the part of the slave and certain all-encompassing rights on the part of the master. Any case of disobedience or treachery meets with no pardon; absolute power over life and death is the prerogative with which every society endows the master in regard to his household and his slaves.<sup>2</sup>

The law seems to know no obligation of the master to his slave. That is entirely a matter of private concern and self interest with the master; as is also the necessity for the slave to get into his master's good graces a matter of self preservation in which the law can take no interest. As far as historical record is concerned, there is rather an impenetrable veil over the private relation of the slave to his master; and perhaps it is better so. An instance only now and then throws a faint light upon the subject.

A most important connection between the master and the slave

<sup>1</sup> Even the Church does not always see fit to interfere. GUÉRARD, vol. i. p. 312, note 10. The Church causes slavery to be decreed as punishment for (canonically) illicit marriages. *Lex Alam.* c. 39. *L. Bajuuv.* vi. 1, 3.

<sup>2</sup> GRIMM, *R.* A. p. 30. "Der leibeigene knecht im strengsten sinn muss zu dem willen seines herrn sogleich bereit sein." WILDA, p. 575. "Die Graugans (Iceland) setzte den höchsten preis auf den kopf eines slaven oder eines mannes der sich um eine schuld abzudienen zu eigen gemacht und durch tödtung seines herrn, seiner leiblichen oder pflegekinder friedlos geworden. Nach swedischem gesetz (Uplandslag) ein dienstmann sowohl als ein freier oder unfreier knecht, der seinen herrn etc. tödtet, soll gerädert werden und all sein gut verwirkt haben."

exists in the fact of the slave's performing a certain amount of work in the house or on the farm of the master. In the Northern laws the nature of this work is nowhere indicated. In the Salic law, however, a whole series of occupations are mentioned wherein the slaves make themselves useful. Slaves are keepers of vineyards, they are millers, shepherds, hunters, as well as smiths, carpenters, grooms, and house-servants of the lord. It is the ordinary servant's and tenant's labor that they performed, though some of them must have had better if more responsible situations than others, *e. g.*, the goldsmiths, waiters, and overseers in cellar and kitchen.<sup>1</sup> In Northern law only the name exists to characterize this kind of labor (*verk*), while another kind seems to have been reserved for the benefit of the slave (*orka*). The laws give no evidence of what the "orka" was or how it corresponded with the work due to the master. To judge from a sentence in Norse law (*Gþl.* 57), the orka was given the slave with a view to provide for the bringing up of his children, which perhaps was the original meaning of the slaves "peculium." Even in the modern Norwegian language *orke* means heavy exhausting labor.<sup>2</sup> On the continent the Roman *peculium* must have found its imitation among the Germans. The German slave too was settled on land (*vide* Tacitus, although here *liti* may be meant rather than slaves), not in the sense of the Roman *mancipium* who followed the land, but had more a lifelong tenure. As far as I have been able to discover, the laws never mention this matter; but certain statements about the slaves ability to pay for himself (to which I shall refer later) seem necessarily to point to this solution of this much vexed question. To settle slaves on land was the easiest way of maintaining a large stock of them, or rather of making them maintain themselves. Besides, without some mode of earning how could the slave ever have come into the position of buying himself free? We know that the church from the beginning settled slaves on her land: nay, that slaves and serfs came to have so much to dispose of that they could build and endow churches and chapels of their own. But how all this was managed, and how much the slave could with some security call his own, will perhaps forever remain an unexplored mystery.

In case of large estates the slave had to pay certain dues to his

<sup>1</sup> GRIMM, *R. A.* 350-358.

<sup>2</sup> Cp. *Lex Alamann.* tit. xxii. *Lex Bajuwar.* tit. i. c. 13.

master of some portion or of the whole of the land which he was tilling.<sup>1</sup> Norse law gives no hint of what these dues were; it is not even possible to make out from the laws whether such tenure by slaves was general or not. In Sweden, however, such tenure seems to have been customary; in Denmark it appears more than likely to have been so; and we may thus be permitted to consider it a common trait of north Germanic economic life.<sup>2</sup>

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<sup>1</sup> WAITZ, vol. i. p. 226. "Knechte drei tage der woche für den herrn" etc. GRIMM, *R. A.* 358-396. THÉVENIN, *Charte* 74.

<sup>2</sup> AMIRA, vol. i. p. 270, note 10; 523, note 5.